REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORMER EN BANC

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

NIPPON EXPRESS (PHILS.) CORPORATION,
Respondent.

C.T.A. E.B. NO. 505
(C.T.A. CASE NO. 6688)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAY 1 3 2011 3:10 pm

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RESOLUTION

UY, *J.*:

In the interest of substantial justice and consistent with this Court's stand in giving both parties the opportunity to present their respective position, the "Motion For Leave of Court to Admit Attached Comment/Opposition (to petitioner's Supplemental Motion for Reconsideration)" filed by respondent on April 15, 2011 is hereby **GRANTED**, and the Comment/Opposition attached thereto is hereby **ADMITTED** as part of the records of this case.

Thus, this Court hereby resolves petitioner's Motion for Reconsideration (of the Amended Decision dated September 22, 2010) filed on October 13, 2010 and Supplemental Motion for Reconsideration filed on December 8, 2010, with respondent's Comment (on petitioner's Motion for Reconsideration) filed on November 23, 2010 and Comment/Opposition (on petitioner's Supplemental Motion for Reconsideration) filed on April 15, 2011.

Background

A. CTA Case No. 6688

This appeal originated from the Former First Division of this Court (Court in Division), which issued the following:

(a.1) CTA Former First Division's Decision promulgated on January 26, 2009

The Petition for Review was denied due to insufficiency of evidence as Nippon Express (Phils.) Corporation (respondent herein) failed to prove that it did not apply/utilize the claimed input tax against its output tax in the succeeding quarters and that the timeliness of the claim could not be determined due to the absence of the original quarterly VAT returns for 2001;

(a.2) CTA Former First Division's Amended Decision promulgated on March 24, 2009

The Motion for Reconsideration filed by Nippon Express (Phils.) Corporation (respondent herein) was granted by the Court in Division by taking judicial notice of the records in another case (CTA Case No. 6967) pending before it, and after considering the evidence at hand, ruled in favor of respondent by ordering the Commissioner of Internal Revenue (petitioner herein) to issue a tax credit certificate in favor of respondent in the amount of P10,928,607.31 representing its excess/unutilized input tax for the 2nd, 3rd, and 4th Quarters of taxable year 2001; and

(a.3) CTA Former First Division's Resolution promulgated on June 16, 2009

Subsequently, the Motion for Reconsideration of the aforesaid Amended Decision filed by petitioner herein was denied for lack of merit.

B. CTA EB No. 505

Dissatisfied, petitioner filed a Petition for Review before this Court, docketed as CTA EB No. 505, raising among others the ground that "under Section 106(D)(1) of the 1997 Tax Code, sale of goods or properties must be supported by sales invoices, while under Section 108(C) of the same Code, sale of services, as in the case of herein respondent, must be supported by official receipts".

(b.1) CTA Former En Banc's Decision promulgated on June 11, 2010

Agreeing with petitioner, this Court rendered the Decision dated June 11, 2010 stating that the VAT law and regulations require that sales invoices must support the sale of goods or properties; while official receipts must substantiate the sale of services. Thus, without proper VAT official receipts issued to its clients, the payments received by respondent from services rendered to PEZA-registered enterprises and non-resident foreign corporation for taxable year 2001, cannot qualify for zero-rating for VAT purposes; and accordingly, the claimed input VAT payments allegedly attributable thereto cannot be granted. Consequently, the Amended Decision dated March 24, 2009 and the Resolution dated June 16, 2009 of the Court in Division in CTA Case No. 6688, were reversed and set aside; and

(b.2) CTA Former En Banc's Amended Decision promulgated on September 22, 2010

However, in the Amended Decision promulgated on September 22, 2010, the Court reversed its position in view of the pronouncements in *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 182364*, and therefore expressed that it shall make no distinction between sales invoices and official receipts, as both evidence can be used interchangeably in support of one's claim for refund or issuance of a tax credit certificate representing excess/unutilized input VAT arising from zero-rated or effectively zero-rated sales of goods and/or services. Thus, the Decision dated June 11, 2010 was set aside; and accordingly, the Amended Decision and Resolution of the Court in Division in CTA Case No. 6688 were affirmed in toto.

Petitioner's Motion for Reconsideration dated October 13, 2010 and Supplemental Motion for Reconsideration dated December 8, 2010

Subsequently, petitioner filed her Motion for Reconsideration[1] of the Amended Decision dated September 22, 2010 and Supplemental Motion for Reconsideration[2] on October 13, 2010 and December 8, 2010, respectively; while respondent filed its Comment (on petitioner's Motion for Reconsideration) on November 23, 2010[3] and Comment/Opposition (on petitioner's Supplemental Motion for Reconsideration) on April 15, 2011.

Petitioner submits the following arguments in support of her Motion for Reconsideration and Supplemental Motion for Reconsideration:

(1) "The law is clear that sales invoice must support the sale of goods or properties, whereas official receipts must support sale of services";

(2) "The Petition for Review filed by herein respondent before the lapse of the 120-day period accorded to the CIR to decide on its claim for input VAT refund are not within the ambit of the jurisdiction of this Hon. Court of Tax Appeals"; and

(3) "The defense of lack of jurisdiction may be raised by herein petitioner at any stage of the proceedings, even on appeal".

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[1] Docket, pp. 152-158.
[2] Docket, pp. 173-178; Admitted as part of the Records in the Resolution dated March 22, 2011, Docket, pp. 193-194.
[3] Docket, pp. 166-172.

Respondent counters that official receipts can be used interchangeably with sales invoices, since sales invoices are sufficient evidentiary documents to prove zero-rated sales of services, as held in the case of *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 182364*, promulgated on August 3, 2010.

Moreover, it asserts that it should not be faulted for its reliance with the existing jurisprudence prevailing at the time of its application for refund, particularly the rule that both administrative and judicial claims for refund/credit of input VAT on zero-rated sales must be filed within two years from the date of filing of the return and payment of tax due. The cited *Aichi case* is inapplicable in the present case since the same was only promulgated on October 6, 2010; otherwise, it is detrimental to respondent's vested rights and violative of the legal principle of *stare decisis*. As a matter of fact, the said ruling resolved by the First Division of the Supreme Court did not become part of the law of the land considering that only the Supreme Court sitting *En Banc* can effectively modify or reverse the principle of law or interpretation previously laid down by it in an earlier decision sitting in division. Lastly, respondent argues that petitioner is barred by estoppel from raising the issue of jurisdiction; that the doctrine of exhaustion of administrative remedies admits of exceptions; and that the Court of Tax Appeals shall not be strictly governed by technical rules of procedure. Thus, respondent prays for the denial of both motions, and to order petitioner to issue a tax credit certificate in the amount of P10,928,607.31 representing its excess or unutilized input tax attributable to zero-rated sales for the taxable year 2001.

THE COURT'S RULING

Upon careful review of the arguments raised by the parties, We find petitioner's contentions meritorious.

It bears stressing that the exercised option of the taxpayer, respondent in this case, to claim for the refund/issuance of tax credit for its alleged input taxes attributable to zero-rated sales for the 2nd, 3rd and 4th Quarters of taxable year 2001 is subject to the provisions of Section 112 of the National Internal Revenue Code (NIRC) of 1997.

Relevant thereto, in the landmark case of ***Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.***[4], the Supreme Court explained that the Tax Code provides a period of two years after the close of the taxable quarter when the sales were made, within which a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may file an administrative claim for the issuance of tax credit certificate or refund of its unutilized input tax. Should the Revenue Commissioner deny the claim or fail to act on the claim within one

[4] G.R. No. 184823, October 6, 2010 (SC Resolution dated December 6, 2010 denied the Motion for Reconsideration filed thereto).

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hundred twenty (120) days from the filing of the administrative claim and submission of supporting documents, the affected taxpayer is granted a period of thirty (30) days from the denial or inaction within which to appeal his case before this Court.

In the present case, respondent filed its administrative claim for refund or tax credit of its unutilized input VAT attributable to its zero-rated sales for the 2nd, 3rd, and 4th Quarters of the taxable year 2001 on April 24, 2003. Considering that the subject taxable quarters closed on June 30, 2003, September 30, 2003 and December 31, 2003, the administrative claim filed on April 24, 2003 was filed well within the two-year period prescribed by law. However, although the said administrative claim was filed within the two-year prescriptive period, this Court is constrained to deny the instant claim because judicial recourse before this Court was prematurely resorted to by respondent.

In the same *Aichi case*[5], the Supreme Court emphasized the importance of the periods provided under Section 112(D)[6] of the NIRC of 1997, in the determination of the timeliness of filing of an appeal with this Court, to wit:

> "***The filing of the judicial claim was premature***
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> However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim

[5] *Ibid.*
[6] Now Section 112(C) upon the effectivity of Republic Act No. 9337 on November 1, 2005.

for tax refund/credit for having been filed in violation of Section 112(D) of the NIRC, which provides that:

> SEC. 112. Refunds or Tax Credits of Input Tax. -
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> xxx xxx xxx
>
> (D) Period within which Refund or Tax Credit of Input Taxes shall be made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.** (Emphasis supplied.)

Section 112(D) of the NIRC clearly provides that the CIR has '120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit],' within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, **respondent did not wait for the decision of the CIR or the lapse of the**

120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that 'any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales.' The phrase 'within two (2) years xxx apply for the issuance of a tax credit certificate or refund' refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has '120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)' within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. **As we see it then, the 120-day period is crucial in filing an appeal with the CTA.**

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In fine, **the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA**." *(Emphasis and underscoring Ours)*

In light of the foregoing jurisprudential pronouncements, Section 112(D) of the NIRC of 1997 directs the Commissioner of Internal Revenue to act on administrative claims for refund/applications for issuance of the tax credit certificate within a period of one hundred twenty **(120) days** from submission of complete supporting documents. Upon partial or full denial of such claim, or the expiration thereof without any action by the Commissioner on said claim, the taxpayer only has a period of thirty **(30) days** within which to seek judicial recourse from the adverse decision or inaction of the Commissioner before the Court of Tax Appeals.

Thus, it becomes incumbent upon the taxpayer-claimant to comply, not only with the two-year period within which to file a refund/tax credit claim with the Bureau of Internal Revenue, but must also give the Commissioner of Internal Revenue a period of one hundred twenty (120) days to either partially or fully deny the claim.

Subsequently, upon denial of the claim, or after the expiration of the 120-day period without any action by the Commissioner thereon, only then may the taxpayer-claimant seek judicial recourse to appeal the Commissioner's action or inaction on a refund/tax credit claim, within a period of 30 days therefrom.

At this point, it is worthy of emphasis that judicial interpretation of a statute constitutes a part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[7] As the Supreme Court is merely interpreting a law which had long been effective, and not modifying or reversing any existing jurisprudence, the ruling in the ***Aichi case*** must be applied herein. Consequently, neither the doctrine of *stare decisis* nor any vested right was violated in applying the said ruling in the present case.

Applying the foregoing discussion in the case at bench, the judicial claim before the First Division of the Court of Tax Appeals (Court in Division) filed on April 25, 2003 was prematurely filed as the same was done before the lapse of the 120-day period.

Indubitably, respondent miserably failed to observe the 120-day period under Section 112(D) of the NIRC of 1997, to give the Commissioner of Internal Revenue the opportunity to act on its refund claim. Correspondingly, the premature filing of its Petition for Review before the Court in Division warrants a dismissal inasmuch as no jurisdiction was acquired by thereto. This jurisdictional nature of such premature filing is consistent with the pronouncements made in the ***Aichi case***, the prevailing jurisprudence on the matter.

As aptly held in *Yao vs. Court of Appeals, et al.*[8]:

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[7] *Eagle Realty vs. Republic of the Philippines,* G.R. No. 151424, July 31, 2009.
[8] G.R. No. 132428, October 24, 2000.

"The right to appeal is **not** a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. Since the right to appeal is not a natural right nor a part of due process, **it may be exercised only in the manner and in accordance with the provisions of law.** Corollary, **its requirements must be strictly complied with.**

That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional. Non-compliance with such legal requirements is fatal, for it renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision." *(Emphases Ours)*

Parenthetically, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy,[9] and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[10] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[11]

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[9] *Commissioner of Internal Revenue vs. Villa, et al.*, G.R. No. L-23988, January 2, 1968.
[10] *Laresma vs. Abellana*, G.R. No. 140973, November 11, 2004.
[11] Please refer to *De Guzman, et al. vs. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.

It should be recalled that this Court is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction.[12] Relative thereto, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim.[13] Clearly therefore, the issue on jurisdiction may be raised by petitioner herein at any time as long as a decision has yet been issued by a competent court which has already become final and executory; hence, respondent's position that petitioner is barred by estoppel in raising the same has no legal basis.

Furthermore, as regards respondent's submission that official receipts can be used interchangeably with sales invoices, the Supreme Court in its recent ruling in ***Kepco Philippines Corporation vs. Commissioner of Internal Revenue, G.R. No. 181858, November 24, 2010***, again recognizes that under the law, a VAT *invoice* is necessary for every sale, barter or exchange of goods or properties while a VAT *official receipt* properly pertains to every lease of goods or properties, and every sale, barter or exchange of services. In other words, the VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Thus, the High Court concluded that VAT invoice and VAT receipt should not

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[12] *Ker & Company, Ltd. vs. Court of Tax Appeals, et al.*, G.R. No. L-12396, January 31, 1962.
[13] Section 1, Rule 9, Rules of Court.

be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used interchangeably.

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration are hereby **GRANTED**. Consequently, the filing of the Petition for Review in C.T.A. Case No. 6688 is deemed premature; and therefore, this Court has no jurisdiction to entertain the instant case.

Accordingly, the Amended Decision dated March 24, 2009 and the Resolution dated June 16, 2009 of the Court in Division in CTA Case No. 6688 are hereby **SET ASIDE**, and the Petition for Review filed thereto on April 25, 2003 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 505** (CTA Case No. 6688)
	Present:
-versus-	*Acosta, P.J.* *Castañeda, Jr.* *Bautista,* *Uy,* *Casanova,* *Palanca-Enriquez, JJ.*
NIPPON EXPRESS (PHILS.) CORPORATION, Respondent.	Promulgated: MAY 13 2011 3:pm

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DISSENTING OPINION

BAUTISTA, J.

With the Court denying the Petition for Review for having been prematurely filed, I must dissent.

I maintain the view that the judicial recourse to this Court under Section 112(C)[1] of the 1997 National Internal Revenue Code ("NIRC") is directory and permissive and not mandatory nor jurisdictional as long as the claim is filed

[1] As Amended by Republic Act No. 9337.

within the two (2)-year prescriptive period provided under Sections 112 and 229 of the 1997 NIRC, as amended.

As the Court consistently ruled, a taxpayer-claimant has the option of seeking judicial redress for refund of excess or unutilized input value-added tax ("VAT") attributable to zero-rated sales or effectively zero-rated sales, either within thirty (30) days from receipt of the denial of its claim for refund or tax credit, or after the lapse of the one hundred twenty (120)-day period in the event of inaction by the Commissioner of Internal Revenue ("CIR"); provided that both the administrative and judicial remedies must be undertaken within the two (2)-year period.

Section 112 (C) of the 1997 NIRC states that:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

The same issue had been thoroughly addressed in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation,*[2] to wit:

> **It bears stressing that the use of the word "may" in the afore-quoted provision indicates that judicial recourse within thirty days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Section 229 of the NIRC**. It is a well-settled doctrine in statutory construction that the word "may" when used in a statute, is permissive and operates to confer discretion; it cannot be construed as having a mandatory effect.
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> Corollary thereto, the Honorable Court of Appeals has ruled that when the 2-year prescriptive period is about to prescribe and the claim for refund with the Commissioner of Internal Revenue has not been acted upon by him, for the protection of the interest of the taxpayer, the latter should file a Petition for Review with the Court of Tax Appeals within the said 2-year period; otherwise, if the decision of the Commissioner is adverse to the taxpayer and it was made after the 2-year period, he can no longer appeal the same to the Court of Tax Appeals. The Court of Appeals ratiocinated in this wise:
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>> "It appears therefore, **that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case**. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.
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>> Incidentally, **the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal.** The law fixed the same

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[2] CTA EB No. 408 (CTA Case No. 6647), March 25, 2009.

> period — two years — for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing of suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of the decision) before an appeal could be made in court. Indeed, only the latter case presupposes the existence of a prior decision of the Commissioner which could be subjected to review by the court. In fact, the Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner could be pending simultaneously with a suit for refund filed before the former (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994*)." (*Boldfacing supplied*)

Therefore, there is no need to wait for the denial of the claim by the CIR or even his inaction after the expiration of the one hundred twenty (120)-day period before the taxpayer can lodge its appeal with this Court,[3] for claims for refund or tax credit, both in the administrative and judicial fora must be filed within the 2-year period.[4] Beyond that period, the taxpayer can no longer appeal to this Court.[5]

In the present case, the respondent filed for a claim for refund/issuance of tax credit for its alleged input taxes attributable to zero-rated sales for the 2nd, 3rd, and 4th quarters of the taxable year 2001 on April 24, 2003. The Court held that while the administrative claim was filed within the prescriptive period, the respondent did not observe the one hundred twenty day (120)-period before filing its judicial claim on April 25, 2003.

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[3] Commissioner of Internal Revenue *v.* CE Cebu Geothermal Power Company, Inc., CTA EB No. 426, May 29, 2009.
[4] Commissioner of Internal Revenue *v.* Victorias Milling Co., Inc., No. L-24108, January 3, 1968, 22 SCRA 12.
[5] Commissioner of Internal Revenue *v.* Accenture, Inc., CTA EB No. 410 (CTA Case No. 7387), March 18, 2009.

However, in applying the above doctrines, the respondent's judicial claim cannot be deemed filed premature for so long as it was filed within the two (2)-year period. It matters not that the Petition for Review was filed merely a day after the administrative claim.

Accordingly, I vote that the Petition for Review be **GIVEN DUE COURSE.**

LOVELL R. BAUTISTA
Associate Justice